IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6102 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT AGRICULUTRAL UNIVERSITY

Versus

AI PATHAN

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Appearance:

MR SA DESAI for Petitioner

MR JT TRIVEDI for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 27/03/2000

ORAL JUDGEMENT

1. Service of Rule waived by Mr. Trivedi on behalf of respondents. Learned Advocate Mr. S.A. Desai is appearing on behalf of petitioner University and Learned Advocate Mr. J.T. Trivedi is appearing on behalf of

respondent workman.

2. The brief facts of the present petition is that the respondent workman has challenged his termination

order dated 2nd September, 1989 before the Labour Court in Rajkot in Reference No.92 of 1990. The Labour Court had decided the said Reference on 11th June, 1997 directing to the petitioner to reinstate the respondent workman in service with continuity of service and with 50% backwages of the interim period with effect from 2nd September, 1989. The said award passed by the Labour Court, Rajkot dated 11th June, 1997 has been challenged by the petitioner University before this court being Special CA 1048 of 1998. The said Special CA is decided on 18th September, 1998 wherein this court has set aside the said award and proceedings before the Labour Court has been restored on the following conditions:-

(i) The respondent will be permitted to join on duty during the pendency and disposal of the Reference. He will be permitted to join on the first working day of October 1998.

(ii) All the arrears of the respondent from the date of the award will be paid to him by the end of October 1998.

(iii) 50% of the backwages awarded to the respondent will be deposited in the Labour Court. The Labour Court will invest it in a Fixed Deposit in any nationalised bank and the periodical interest accrued thereon will be paid to the respondent

unconditionally.

(iv) The petitioner as well as the respondent have the liberty to produce whatever evidence they want to produce additionally and on hearing both the advocates the restored Reference will be decided in accordance with law.

Thereafter, the matter has been remanded back to the Labour Court to decide the validity of the termination order. Meanwhile, the condition which has been imposed by this court is that the petitioner shall permit the respondents to join on the first working day of October,

1998 and all the arrears of the respondent from the date of award will be paid to him by the end of October, 1998 and 50% of the backwages will be deposited in the Labour Court and shall be invested in a Fixed Deposit in a nationalised bank and periodical interest annulled thereon will be paid to the respondents unconditionally. On the basis of the direction given by this court, the respondent workman has been reinstated in service but so far as wages from the date of award to the date of reinstatement is concerned, there was some dispute and therefore the respondent workman has filed Recovery Application No.61 of 1998 before the Labour Court and the Labour Court has passed an order in Recovery Application on 24th May, 1999 directing the petitioner University to pay Rs.13,328/- being the difference in wages and Rs.6502.80 towards bonus to the respondent workman with a cost of Rs.3,000/-. The said order passed by the Labour Court in Recovery Application No.61 of 1998 is under challenge before this court. The notice has been issued by this court and the respondent workman has appeared and filed affidavit in reply on 10th January, 2000 and the rejoinder has been filed by the petitioner on 24th February, 2000. One independent affidavit has been filed by the respondents giving details of the facts on 21st March, 2000 and a statement has also been produced at Annexure T and U, pages 43 and 44.

3. I have heard both the learned advocates for the respective parties. Now in the present case, some minor controversy is raised between the parties. According to page 44, the statement prepared by the petitioner shows how much amount the respondent workman is entitled for the period from 11th June, 1997 to 30th September, 1998. The calculation has been carried out by the petitioner wherein according to the petitioner Rs.11,720/- has been paid and according to considering the minimum wages this amount comes to Rs.22061.60 and therefore according to the University the difference comes to Rs.10,342/- and again the respondents has submitted that the difference of amount comes to Rs.13,328/- and Rs.11,720/- was paid by the petitioner University. According to the respondents, the total amount comes to Rs.25,048/-. The respondents further stated in the affidavit that the bonus amount of Rs.1,612/- is payable to the respondent

for the year 1997-98 and also claimed the cost of Rs.3000/-. In the calculation which has been carried out by the respondent at page 43, according to him the total amount from 11th June, 1997 to 30th September 1998 as per minimum wages comes to Rs.25,048/- out of which Rs.11,720/- has been paid and the difference has come to Rs.13,328/- and adding the amount of bonus of Rs.1,612/the total amount comes to Rs.14,940/- which has not been paid by the petitioner University in spite of the fact that there is an order passed by the Labour Court in Recovery Application and there is a clear direction issued by this court in Special CA 1048 of 1998.

4. I have considered the submissions of both the learned advocates. Learned Advocate Mr. J.T. Trivedi has submitted that let us forget the calculation of the respondent but consider the calculation submitted by the University. Now, according to the University considering the minimum wages for the aforesaid period, the total amount comes itself to Rs.10,342/- and if bonus amount of Rs.1612/- is added for the year 1997-98 then it will come to Rs.11954/-. Therefore, according to the submission of Mr. Trivedi, the respondent is entitled to at least Rs.11,954/which can be said to be an undisputed amount between the parties. Mr. Trivedi further submitted that the respondent workman is also entitled to the cost because in spite of having the clear direction from this court, no complete payment has been made by the petitioner. Therefore, the respondent has no option except to approach the Labour Court for filing Recovery Application and thereafter the cause of this petition. Therefore, according to his submission some cost must have to be given to the respondent workman which will mitigate the hardship which has been caused because of the conduct of the petitioner University.

5. After considering the submissions of both the learned advocates, according to my opinion the submissions made by learned advocate Mr. Trivedi is quite justified, reasonable and fair. Against that, Mr. Desai has not pointed out any serious objection and both the learned advocates has left the matter for deciding the figure to the discretion of this court. Therefore, according to my opinion, the calculation which has been carried out by the petitioner University at page 44, the

difference of amount which the respondent is entitled is Rs.10,342/- and adding the bonus of Rs.1612/- it comes to Rs.11,954/-. Therefore, the respondent is entitled to recover the said amount from the petitioner University. According to my opinion, the respondent workman is also entitled to some amount of cost. Considering the two proceedings if Rs.2000/- has been awarded by this court to the respondent workman by way of cost then he is entitled to recover it from the petitioner University. Therefore, considering all these figures, the total amount comes to Rs.13,954/- including the cost which the respondent workman is entitled and therefore accordingly the order passed by the Labour Court in Recovery Application No.61 of 1998 dated 24th May, 1999 is required to be modified. The total amount to which the respondent workman is entitled is Rs.13,954/- including the cost of Rs.2000/- and the order passed by the Labour Court is modified to that effect and therefore it is directed to the petitioner University to pay the said amount of Rs.13,954/- to the respondent workman within a period of three weeks from the date of receiving a certified copy of the said order and accordingly, the order in question is modified and the said petition is partially allowed. Rule made absolute to that extent. No order as to costs.

( H.K. Rathod, J.)

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